

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TONY MYLES,	§	
HC SPN 01315240,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. H-04-4221
	§	
CLASSIFICATION,	§	
	§	
Defendant.	§	

ORDER

In the pending Motion to Amend, plaintiff complains that his civil rights complaint was dismissed because he failed to file a response to Defendant's motion for summary judgment. (Docket Entry No.35). Plaintiff claims that he mailed a response to the motion on December 27, 2005. (*Id.*). Plaintiff maintains his response would show the existence of a material fact issue in this case. He does not, however, indicate what the fact issue is and he makes no argument with respect to any claims in the motion for summary judgment. Plaintiff indicates that he still has a copy of the response, which he presumably hopes to file. (*Id.*).

A motion filed within ten days of judgment is treated as a motion to alter or amend under Rule 59(e). *Edward H. Bohlin Co. v. Banning Co.* , 6 F.3d 350, 353 (5th Cir. 1993). A Rule 59(e) motion may be granted if the moving party demonstrates any of the following: (1) the judgment was based upon a manifest error of law or fact; (2) there is newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; and (4) there is an intervening change in controlling law. *See* 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995). However, a Rule 59(e) motion may not be used to “relitigate old matters, or to raise arguments or present

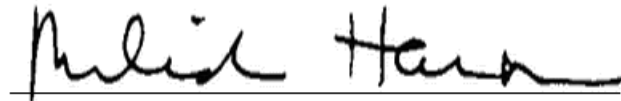
evidence that could have been raised prior to the entry of judgment.” *Id.*

The Court dismissed plaintiff's complaint because he did not exhaust the administrative remedies available to him at the Harris County Jail before filing this suit, not because he did not file a response to the motion for summary judgment. Plaintiff states nothing in the Motion to Amend that would entitle him to relief under Rule 59(e).

Accordingly, Plaintiff's Motion to Amend (Docket Entry No.35) is DENIED.

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas this 14th day of March, 2006.

A handwritten signature in black ink, appearing to read "Melinda Harmon", written over a horizontal line.

Melinda Harmon
United States District Judge